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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/722,721	11/26/2003	Ronald Van Teunenbroek	DVME-1007USDIV	7342
21302	7590	11/03/2004		EXAMINER
		KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103		MILLER, BENA B
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/722,721	TEUNENBROEK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bena Miller	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1-13 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/26/03.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Information Disclosure Statement***

The information disclosure statement filed 11/26/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. US 6,739,935. The claims of the instant application recites most of the elements of the patented claims except a coupling piece having a coupling structure that is capable of directly connecting with a substantially identical coupling structure of another toy article, and a connecting element which attaches said handle. However, it would have been

obvious to delete these features from the device in the patent for the purpose of making the device to more economical to produce.

### ***Specification***

Claim 10 is objected to because of the following informalities: Claim 10 fails to meet the requirement of 37 CFR 1.52.(b)(2)(ii). Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is lack of proper antecedent basis for the limitation "shear pin" recited in claim in 6 .

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with definiteness, which are too numerous, the following examples are provided for the applicant but not limited to.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claim 1, the examiner is unsure as to what is all of the structure encompassed by the phrase, "which connecting element gives way when a

predetermined force or torque is exerted thereon". It is unclear as to what is considered to be "predetermined". Further, it appears that the phrase "predetermined force or torque" is non-limiting.

Regarding claims 2-4, they appear to be entirely functional. Any structure to be recited in these claims cannot be determined. For example only, expressions in claims 2 and 3 such as "breaks loose" and "intended to be coupled" are vague and indefinite.

There is lack of antecedent basis for limitations "the part" as recited in claims 3 and 4, "the wall" and "the bottom" both recited in claim 9.

Regarding claim 11, the phrase "one or more of the handle" is vague and indefinite because claim 1 recites that the toy article comprises "a handle" where claim 11 recites "one or more of the handle". It is unclear whether or not the toy article comprises only one or more than one handle.

The claims are so indefinite and vague for the reasons noted above that their scope cannot be determined with substantial certainty. Clarification of the scope of the claims is required in response to this Office Action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Cross, Jr. et al.

Regarding claim 1, as best understood, Cross, Jr. et al teaches in figures 1-8 a toy article comprising a handle (17), a coupling piece 911 and a connecting element (28) configured as claimed.

The examiner considers claims 2-5 and 9-13, as best understood, to be inherent in the device of Cross, Jr. et al.

Regarding claim 8, as best understood, Cross further teaches a cylindrical handle portion (fig. 7) configured as claimed.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross, Jr. et al.

Cross, Jr. et al teaches in the figures the invention substantially as claimed. However, Cross fails to teach a shear pin. Cross, Jr. teaches that pins 28 and 29 are used to connect handle 11 to a second toy 15. Handle 11 is releasably engaged with a second toy 10 (col. 2, paragraph 12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a shear pin to the handle of Cross for the purposing of producing a more effective exerting force.

Cross Jr. fails to teach a once-only snap connection. Cross Jr. teaches that snap fastener connecting elements 28 and 29 are engageable with abutment surfaces 20 and

21 (col. 3, lines 1-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made provide an once-only snap connection means to the toy of Cross for the purpose of providing secured fit when connecting the handle.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perry, Paksy, Rhodes, Itoh, Henning, Haley, Gill, Mantz, Christiansen and Pepa.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3714

bbm  
October 31, 2004